Supreme Court, U.S.
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In The
Supreme Court of the United States

October Term, 1997

LAWRENCE P. MILES,
Petitioner,

VS.

SUNBELT NATIONAL BANK, LAUREN I. SCHVERAK AND MICHAEL B. MASSEY,
Respondents.

Petition For A Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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September 16, 1997

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QUESTIONS PRESENTED

Pro Se Petitioner Miles brought his claims against the Sunbelt National Bank, Et Al. asserting the Supreme Court precedent *Haines V. Kerner,* 404 U.S. 519 (1971), (See Appendix D), which set the minimum requirements of due process for pro se litigants. Miles has asserted that the district court failed to provide Miles a fair opportunity to show proof to support his claims and that the district court unduly issued post appeal orders which interfered with Miles' right to appeal the disputed rulings. Further, Miles asserts that the Fifth Circuit Court of Appeals issued rulings which conflict with the Supreme Court precedent of *Haines V. Kerner,* Id, as well as established case law as to when jurisdiction transfers to the Appeals Court.

1. Whether the Fifth Circuit erred by dismissing Miles appeal of the district court's denial of the 60(b) motion.

2. Whether the minimum requirements of the Supreme Court precedent in *Haines V. Kerner,* Id, were afforded Miles in the District Court and Fifth Circuit Court of Appeals.

3. Whether 11 U.S.C. 362 bars the recording of foreclosure documents without specific relief from the bankruptcy court of jurisdiction.

PARTIES TO THE PROCEEDING

The parties to the proceeding below and before this Court are the Petitioner, Sunbelt National Bank, B.J. Williams, the Owner and President of the Bank and Trustee in the disputed loan transactions; Lauren I. Schverak, former Executive Vice President and senior loan officer; and, Michael B. Massey, Attorney for the Bank and Substitute Trustee in the disputed loan transactions. Petitioner has no knowledge as to parent and/or subsidiary companies.

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PETITIONER'S REQUEST

The Petitioner Lawrence P. Miles respectfully requests that a writ of certiorari issue to review the judgments of the Court of Appeals for the Fifth Circuit, which entered its Decisions as follows:

Denial of Motion for Rehearing June 30, 1997. (reissued from May 22, 1997 to June 30, 1997)

Dismissed Appeal 96-20890 as without merit and as frivolous 4/17/97. (challenged on both issues)

OPINIONS TO BE REVIEWED

In this matter, the opinion from the Fifth Circuit which pro se petitioner is seeking to have reviewed by this Court, is to be found in the Appendix A together with related Fifth Circuit decisions in Appendix A, C and E. Related decisions by the District Court are in Appendix B and the relevant Supreme Court Case Opinion of Haines V. Kerner, 404 U.S. 519 (1971) is in Appendix D.

JURISDICTION

The petitioner asserts that this appeal meets the minimum requirement for jurisdiction as the petition has been filed within 90 days of the Fifth Circuit's final order, denying Miles' motion for rehearing, but granting Miles subsequent motion to reissue, which set the time to appeal as 90 days from June 30, 1997.

JURISDICTION (Cont.)

However more important to the issue of jurisdiction is that the Fifth Circuit Court of Appeals has entered a decision in conflict with, not only its own prior decision in the case of *New York Life V. Brown,* 84 F. 3d 137, (5th Cir. 5/15/96), as per the Rules of the Supreme Court, Part III, Rule 10(a), but also the rulings appealed from the Fifth Circuit Court, invoke Supreme Court jurisdiction under Part III, Rule 10(c) as said rulings conflict with the Constitution of the United States, Amendments V and XIV, and the Supreme Court precedent in *Haines V. Kerner,* 404 U.S. 519 (1971). (See Appendix D)

STATEMENT OF THE CASE

While the history of this case is lengthy and the facts relevant to the appeal numerous, the basic questions posed by the pro se petitioner are based on the common citizen's Constitutional and statutory rights of due process; to equal protection under the law; to be able to petition government as a common citizen; and, to be able to present civil claims and proof in open court before an impartial and neutral tribunal.

Since Feb. 18, 1992, Lawrence P. Miles, a common citizen, in propria persona, and hereinafter to be referred to as "Miles", has prosecuted a lender liability and 1983 civil rights action against the Sunbelt National Bank; its former Executive Vice President, and Senior Loan Officer, Lauren I. Schverak; and its Legal Counsel, Michael B. Massey; hereinafter to be referred to collectively as "the Bank".

In simple, this action is not just a matter of Miles vs. the Bank, but the failure of the U.S. District Court at Houston, Texas and the Fifth Circuit to provide an unbiased tribunal as per *Marshall V. Jerrico, Inc.* 446 U.S. 238 (1980), and a hearing where Miles could present his proof as per the Supreme Court precedent as defined by *Haines V.Kerner*, 404 U.S. 519 (1971) and to be heard as reserved in *Mullane V. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314 (1950).

BACKGROUND

The following is a sequential review of the case with the petitioner's explanation with excerpts from the docket and record. Miles' petition assertions are to briefly highlight the relevant events for the court.

Prior to becoming involved with the Bank, Miles had owned the property at 1540 Westheimer, Houston, Texas and used the now disputed property as his family homestead since about 1973. Sometime before 1985 when Miles relocated to the Los Angeles, CA. area, Miles told Mr. Saad Scharr, his neighbor at 1544 Westheimer, that he would like to purchase his property next door if Mr. Scharr should ever want to sell it. From 1985 till 1992, Miles used his 1540 Westheimer property as a Texas base for his business interests in Texas and California. In June of 1991, Mr. Lauren I. Schverak, Sunbelt National Bank Executive Vice President and senior loan officer, contacted Miles by phone and indicated that the bank was selling Mr. Scharr's property. Even though the bank had not at that point foreclosed on Mr. Scharr's property, the Bank was actively looking for a buyer. Miles was later informed by Mr. Scharr that the Bank held first and second mortgages of over $200,000 on his property that was worth at the time about $150,000. Mr. Schverak, the Bank officer, offered Mr.Scharr's property for sale at the appraised value.

The Bank agreed to finance 80% of sale price, subject to, Miles refinancing his own property at 80% of its value, and, Miles would receive $50,000 of his $120,000 equity as a payout and incentive to purchase Mr. Scharr's distressed property. The Bank agreed to defer the payments on the new loans for at least 6 months, because neither property had any rental income to pay the proposed debt service. Mr. Schverak promised Miles, that if tenants were not secured in a timely manner, the bank would work with Miles to defer payments further and/or restructure the loans. With verbal promises of future cooperation, the bank induced Miles to buy Mr. Scharr's property in June of 1991. By January of 1992, the properties had not yet leased, and Mr. Schverak's frequent intrusion in to the Realtors marketing of the properties in Houston, had become a problem. Mr. Schverak, the bank loan officer, who had taken more than the normal business interest in marketing Mr. Scharr's property, was making calls to the listing Realtor to review his progress, and the result was that the Realtor became uncomfortable, and dropped the listing. It became evident to Miles, the absentee landlord, living in California, that with the loss of the Realtor, the prospects, for leasing the properties and paying the debt service, were diminishing. Miles contacted Schverak at the Bank and requested that the notes be deferred and/or restructured as promised. Schverak came back from the bank loan committee with a negative response saying the matter was out of his hands, resulting in an impasse between Miles and the Bank.

Miles contacted lawyers both in Los Angeles and Houston and it was clear that should the dispute result in litigation, most, if not all of the remaining $70,000 in equity would be dissipated in legal fees. Therefore Miles went to his local law library on his own to research the legal options.

MILES FILES PRO SE LAWSUIT

When Miles became aware that the bank had fraudulently induced him into a nonviable (ultra vires) business transaction, and now the bank was breaching the written and oral agreements, which could result in Miles losing the $70,000 of the equity remaining in the two properties. Miles, on his own, filed the pro se lawsuit for fraud, banking, civil rights and other violations of Texas State and Federal laws in the U.S. District Court at Los Angeles, CA. on Feb. 18, 1992. During the course of the litigation, the Bank offered a settlement, but with unfair terms and conditions, while at the same time arranging a foreclosure sale of the properties to the Bank's owner, B.J. Williams. Miles petitioned the U.S. District court in Houston for relief, without success. Thereafter, Miles was forced to file a Chapter 13 bankruptcy case No. LA 92-84424-54 in the U.S. District Court at Los Angeles, CA., July 10,1992, contemporaneous, to Miles civil case No. LA-H-92-1246, which had been transferred to the Southern District of Texas at Houston, 4/2/92, on the defendants' motion. The Bank ignored the automatic stay and recorded the disputed foreclosure, June 13, 1992, without obtaining relief from the U.S. District Court at Los Angeles, which

court, Miles asserts had jurisdiction over the matter of the disputed properties, during the period of the bankruptcy from July 10, 1992, until the discharge June 19, 1995. (See Appendix F, Pgs. 18a-22a).

MILES' COMPLAINT

Specifically, Miles alleges in his original and the second amended complaints at law that the bank violated Miles' civil rights under 42 U.S.C. 1983, breached oral and written contracts, created an illegal tyin arrangement and other banking violations pursuant to 12 U.S.C. 1972, violated 11 U.S.C. 362, and Texas homestead and real estate laws as per Article 3810 Section 11, and illegally tampered with official loan documents and signatures in violation of Texas notary statutes after the disputed closing. The Bank's attorney Michael B. Massey violated the Texas Disciplinary Rules of Professional Conduct pursuant to Rule 1.07 by creating a conflict of interest when representing Mr. Scharr, writing earnest money contracts for the sale, representing the Bank, and at the same time acting improperly as an intermediary between Miles and the bank and failing to divulge that Massey would also be the substitute trustee in the transaction.

Because Miles had filed his civil suit 2/18/92 before the bankruptcy 7/10/92, Miles, without standing, petitioned the U.S. District Court at Houston for relief from the disputed foreclosure filed July 13, 1992. Specifically, Miles filed on 10/19/92, a motion for partial summary judgment against the attorney, Michael Massey, who engineered the foreclosure as the substitute trustee.

Even though the District Court at Houston had no jurisdiction to even consider the matter, because of the pendency of the bankruptcy in Los Angeles bankruptcy court, the Houston Court issued a ruling on 2/25/93, granting the defendants' cross motions for partial summary judgment. Also relevant, but not considered by the Court is the requirement under Texas Art. 3810 Section 1 for suit and hearing on the merits be held in District court to determine the validity of a contested forced sale. Miles asserts that no such hearing has been provided at any stage of the proceedings. Of course, if Judge Hoyt had jurisdiction to grant the defendants that exoneration, probably the issue of the flagrant violation of the automatic stay would have been resolved at that point in the proceedings. (See Appendix J, pgs. 44a-45a)

In the first appeal, which itself was stayed by the fact of the bankruptcy, the Fifth Circuit made no comment or ruling itself as to the issue of the bankruptcy jurisdiction, but stated: (See Appendix E, Pgs. 11a-17a).

"Miles filed a second motion for partial summary judgment on the issue of illegal foreclosure. The district court denied Miles' motion and granted the cross-motion for partial summary judgment, finding that the foreclosures were valid, the transfer of title to the properties effected by the trustee's deeds were not avoidable by Miles' filing the bankruptcy petition, and the automatic stay provisions were not violated." Miles asserts that said ruling was void itself, not only because Miles had no standing to take the action in the Houston District Court, but also because the Judge had no authority to make a ruling while the issue of the disputed properties was a matter before the U.S. District Court at Los Angeles.

This issue has been raised by the petitioner to the Fifth Circuit without a resolution of same.

It has been asserted by the defense that Miles had his day in Court at the pretrial hearing, May 3,1993, when the Court claimed to hear the case, ostensibly by discussing the case. Miles does not claim that the court would not allow him to speak, as the record will show that Miles spoke up and attempted to obtain a fair hearing, but without success. The pretrial hearing never reached the merits of the case as evidenced by the courts order dismissing without prejudice. Defendants argue that Miles had a fair hearing, and the pro se petitioner asserts that he hasn't. This is not a matter of the litigants seeing the glass from different sides, but a glass that has no water in it at all. Without Miles receiving a measure of due process from the courts, the merits of the case were not reached. Miles comes now to the Supreme Court and asserts that the District Court and the Fifth Circuit have unfairly denied Miles the right to show proof as called for in *Haines V. Kerner, Id.*

A review of the record transcript will show that from the beginning of the pretrial hearing until the end, Judge Kenneth Hoyt engaged Miles personally as to his motives in bringing the lawsuit, would not allow Miles to present argument, or case law in support of his assertions that the case was stayed by Miles' bankruptcy proceedings in the bankruptcy court at Los Angeles, California. Further, the district court did not allow Miles to examine the defendant's affidavits, or the defendants at any time, struck Miles subpoenas without allowing reasonable opportunity to perfect.

The Court would not allow him to call witnesses present in the court at the pretrial hearing, and the court took the side of the defendants without reaching the merits of the case. The Court created a judicial bias by not remaining impartial and disinterested as required by *Marshall V. Jerrico, Inc.*, Id. Miles asserts that for the Judge to actively interrogate, and at the same time not allow him to submit his proof on all issues in an unbiased and disinterested forum, as per *Matthews V. Eldridge*, 424 U.S. 319, 344 (1976), violated Miles due process rights under the 5th. and 14th. Amendments of the Constitution. Miles stood on the written complaint, choosing not to be engaged by the Judge's biased interrogation. When it became apparent to the District Court that Miles would stand on his written pleadings, the Judge instructed Miles to start his appeal. Judge Hoyt said, "you may go home and start your appeal". Miles had asked the court by motion to delay the trial of the case because of the pendency of the bankruptcy case in California. The Court denied that motion without allowing Miles the opportunity to argue the case law and precedents.

Then the Judge issued this ruling:

"This case was called to trial on the complaints of the plaintiff Miles that he had been fraudulently induced to entering a financial arrangement with the Sunbelt National Bank ..... The Court holds that no cause of action in fraud, tort or contract has been asserted. For reasons stated here and those obvious in the record,

there is no stated cause of action in law, for want of prosecution, Court DISMISSES the plaintiff's lawsuit for lack of prosecution, and because the plaintiff refused to discuss his case with Court prior to jury selection. This case is ORDERED Dismissed as to all of the plaintiff's claims. The defendant's cross-claim is STAYED pending the resolution of plaintiff's bankruptcy proceeding."

5/10/93 APPEAL FILED by Miles.

8/10/94 Fifth Circuit dismissed Miles appeal on ground that none of several rulings by the court constituted a final judgment. The District Court had specifically issued what the Court termed a "Final Judgment", and instructed Miles to start his appeal. However the Fifth Circuit Court held that the so called " final judgment " was not a final judgment, as the Court had not disposed of the counter claims of the defendants which were stayed pending the outcome of the bankruptcy in the California jurisdiction. Further, the opinion pointed out that the District court had not certified the appeal, nor had Miles requested same as per Rule 54(b). The result was that the Fifth Circuit denied jurisdiction. (See Appendix E, Pgs. 11a-17a).

Miles asserts to the Supreme Court, at the time of the hearing on 5/3/93 the entire case had been stayed when Miles filed his Chapter 13 bankruptcy on July 10, 1992, and that all orders dealing with the disputed properties by the U.S. District Court at Houston and the Fifth Circuit after that date were and, are moot. (See Appendix F, Pgs. 18a-22a)

When Miles' civil case was returned from the appeals court to the district court, the Judge issued the following order:

9/19/94 [168] ORDER: "Upon the lifting of the stay associated with the plaintiff's bankruptcy proceeding, the parties shall notify the court and the court shall proceed with the case."

12/19/94 "...denying MOTION to the District Court to give Full Faith and Credit to the automatic stay issued July 10, 1992, pursuant to 11 U.S.C. 362, by setting aside all orders issued after July 10, 1992 relating to 1540 and 1544 Westheimer, Houston, Texas."

Over the next year, Miles pursued the bankruptcy action in U.S. Bankruptcy Court at Los Angeles, CA., converting the Chapter 13 case to Chapter 11, and then to Chapter 7, eventually being discharged June 19, 1995. (See Appendix G, Pgs. 23a-26a).

Not knowing the full scope of the automatic stay, Miles, without standing, continued to file motions in the District Court at Houston, Texas, attempting to obtain a hearing to perfect his civil case. To be able to more efficiently prosecute the case, and because of unrelated personal reasons, Miles and his family moved back to Houston, Tx. during the summer of 1994 where the civil case had been transferred April 2, 1992, two years before. Central to Miles' current appeal is the assertion that the District Court repeatedly denied Miles' request for hearings.

10/19/92 [42] ORDER granting Sunbelt National Bank's [31-1] motion for preliminary injunction.

10/19/92 [43] ORDER denying Miles motion for an emergency telephone conference.

Note: That first preliminary injunction as well as the later Fifth Circuit declared "indefinite stay" finding as the district court's so-called "final order" [197] 4/17/97 which were issued without a notice, or hearing as required by Rule 65(a) and without security as required by Rule 65(b). Then again after the first appeal:

12/19/94 [177] "District Court denied Miles motions for an evidentiary hearing and/or motion for status conference"

4/13/95 [186] "District Court denied Miles motions for the District Court to give full faith and credit to the automatic stay issued July 10, 1992.., and denied Miles' motion to dismiss the Defendants counterclaims; and for evidentiary hearing, and/or final status conference."

At this point in the proceedings, Miles had completed the move to Houston and the docket record shows that the notice of the rulings did not reach Miles.

*4/26/95"MAIL RETURNED UNDELIVERABLE"

7/6/95 Miles filed with the Houston District Court Certified Notice of the Bankruptcy Discharge dated June 18, 1995 and no record of the certified notice being filed ever appeared on the docket record. (See copy in Appendix G, Pgs. 23a-26a). Miles had not received the courts rulings on his last motions dated Feb. 27, 1995 [181] and Miles called the clerks office for explanation.

* 8/8/95 "In response to telephone request from pltf. Lawrence P. Miles, docket #186,mailed to Mr. Miles at P.0. Box 1949, Bellaire, TX 77402 by certified mail."

Miles, continues to attempt to perfect the case for appeal as the time for appeal had expired during the period when Miles did not receive notice of the court's rulings.

*8/14/95 [189] "MOTION for opening the time for appeal for a period of 14 days....."

9/5/95 [192] "NOTICE OF APPEAL [186-1] of orders denying Full Faith and Credit to U.S.C. 362; motion to dismiss defendants counter claims, motion for rehearing; motion for final status conference as per the courts order issued 9/19/94 [168], and/or an evidentiary hearing."

9/12/95 [193] "ORDER denying as moot, Miles [189-1] motion for reopening the time to appeal..."

Miles, further attempting to perfect an appeal:

9/19/95 [195] "MOTION TO CONSOLIDATE CASES with [195] NOTICE OF APPEAL OF ORDERS [193-1]"

9/19/95 "USCA appeal fees received."

9/21/95 "NOTICE of docketing ROA from USCA number: 97-20736"

10/24/95 "Notice for the clerk to transmit the record to USCA."

*10/30/95 [197] "ORDER: motion to consolidate cases is moot; case is closed and no further filing shall be made under this styled and numbered clause."

*Note: Post Appeal Order was not appealed based on theory that it was moot and became subject of 60(b) motion to District Court, and later appealed to Fifth Circuit, and now to the Supreme Court. (See Appendix H Pgs 27a-41-a). The second appeal No. 95-20736 by Miles was dismissed by the Fifth Circuit on June 13, 1996 and in opinion it stated:

"Miles filed no notice of appeal following the district court's order closing the case. Even though the closing of the case did not dispose of the counterclaim, it was nevertheless a final order. See *Lewis V. Beddingfield,* 20 F. 3d 123, 124 (5th.Cir 1994). *Johnson V. Texas*, 878 F. 2d 904, 905 (5th. Cir 1989) Indefinite stay of suit is final order). We lack jurisdiction to review the order. *United States V. Carr*, 979 F.2d denied 51, 55 (5th. Cir. 1992). Miles's mandamus request is moot." (See Appendix C, Pgs. 6a-7a).

DISCUSSION

Miles pointed out in the appeal that the Fifth Circuit always had jurisdiction to determine its own jurisdiction of any matter appealed from a lower court. *Habetz V. Louisiana H.S. Athletic Ass'n.*, 915 F. 164, 167 (5th. Cir. 1990). The post appeal order acted to deprive the Fifth Circuit of jurisdiction, thus depriving Miles' statutory right of appeal. Miles asserts that the order was void, and/or moot. Case law as to post appeal orders is replete with precedents which hold that jurisdiction passes to the court of appeals when an appeal notice is filed, as petitioner had done two times prior to the post appeal order. However, the Fifth Circuit, which earlier dismissed Miles' first appeal on the grounds that no final judgment existed, because the lower court had not disposed of all parties (defendants counter claims), now decided that even though the counter claims had still not been resolved as the courts order 9/19/94 [168] promised to do, the court's post appeal ruling constituted a final order.

MILES SEEKS LEGAL HELP

Seeking professional legal assistance, Miles visited with a professor of procedural law (who prefers to remain anonymous) at a local law school at Houston, Texas. After reviewing the record, he concurred with Miles that the District Court and the Fifth Circuit have violated Miles right to due process.

He agreed to be a technical consultant and together, Miles and Mr. X drafted the 60(b) motion that became the subject filing to the District Court, the 3rd. appeal to the Fifth Circuit, and now appeal to the Supreme Court of the United States.

9-1-96 [199] "Rule 60(b) MOTION for relief from judgment or order, and request for oral hearing [199-1 and 199-2]". (See Appendix H, Pgs. 27a-41a).

ARGUMENT & AUTHORITIES

Miles has a statutory right of appeal according to 28 U.S.C. Section 1291. The Constitution guarantees all citizens the right of due process and equal treatment under the law, in Amendments 5 & 14. Due process requires a " fair opportunity to obtain an adjudication on the merits of the appeal." *Evitts V. Lucey*, 469 U.S. 387,405 (1985). The questionable order was reasonably interpreted as a permanent restraining order. Such order directed Miles not to take any further appeals, or make any further filings. Miles chose not to overtly disobey the Court's post appeal order. Miles determined that jurisdiction, except for the unresolved issue of the counter suit, had transferred to the Court of Appeals and said post appeal order was "void" and a nullity because it attempted to prevent Miles from being able to perfect his appeal, which is a statutory right. Further Rule 60(b) required the District Court and subsequently the Fifth Circuit to grant relief from the post appeal order because such order is void, if not moot, on its face.

Why? Because said order was issued post appeal, after jurisdiction had passed to the Fifth Circuit, according to a plethora of case law and general understanding by the courts and attorneys as outlined in 28 U.S.C. Section 191, Rule 3. The District court had no authority to issue a post appeal order, unless it aided in the process of the appeal.

Hogg V. U.S., C.A.Ky, 1969, 411 F.2d 578. Notice of appeal operated to transfer jurisdiction to the court of appeals and thereafter district court had no jurisdiction to act except in aid of appeal."

Quite frankly, the Court's misleading comments to Miles, "go home and start your appeal", the failure to grant Miles even a status conference to deal with unresolved issues as his own order [168] indicated would be done after the bankruptcy was discharged, and the post appeal order confusing jurisdiction, together, shows the intention of the Court to attempt to trick Miles into taking premature appeals, and then when Miles has ostensibly perfected an appeal, the Court issued a post appeal order which again confused the issue of jurisdiction. These actions support Miles assertion that Judge Kenneth Hoyt showed inexcusable bias in his orders and management of the case when repeatedly robbing Miles of his statutory right to an appeal, and Constitutional right of due process.

Miles is not the only litigant to question Judge Kenneth Hoyt's bias in a case. As recently as August of 1997 in *Adams V. Chevron,* when Chevron claimed and the Fifth Circuit stated that Judge Hoyt had made remarks that "gave a perception of bias," and were "patently offensive and grossly inappropriate." Judge Hoyt removed himself from that case, after much public criticism. It is odd that the Fifth Circuit has not intervened on Miles' part as this is obviously a case of the District Court attempting to improperly squelch Miles' due process rights. Truly this case against the Bank and appeal is tantamount to David and Goliath. Here Miles, a common pro se litigant who has been wronged by the bank in a classic struggle to keep his homestead, files his meager pro se lawsuit, and for over five years struggles with a Federal Court Judge who, almost has the power of God over him. But Miles, in the face of such power continues to seek his day in court where he can present his evidence and proof according to *Haines V. Kerner, Id.* The omnipotent Judge Hoyt tricked Miles by issuing moot, "catch 22", post appeal orders. The whole Fifth Circuit Court ignored Miles pleadings on appeal by ruling that the post appeal order was a final order, contrary to statutory and case law. Miles relying on the law of the land and the hope of justice that the Constitution promises, and his faith in the American legal system, takes the battle to the highest authority in the land, the United States Supreme Court.

EQUAL PROTECTION UNDER LAW

The Fifth Circuit has ruled in *Perez V. Wainwright,* 640 F. 2d. 596, (5th Cir. 1981) that an attorney cannot forfeit his right of appeal, when he fails to file a timely notice of appeal, even if such failure misleads the court. Does not a pro se counsel have the same right of appeal under law? Is the Fifth Circuit afraid that the common man will take to the courts with a multitude of pro se lawsuits against "the banks" of America? Has the Fifth Circuit intentionally allowed the District Court to ignore the law, and to trick a meager and common plaintiff, who could not afford an attorney to represent his cause?

SUMMARY

The first appeal was dismissed for lack of jurisdiction, even though Judge Hoyt designated his judgment, a "final judgment" and instructed Miles to "go home and start his appeal", because of the fact of the automatic stay associated with the bankruptcy, and because the lower court had not disposed of the defendants' counter claims. When the case was returned to the District Court, Judge Hoyt issued his ruling 9-18-94 that the parties should notify the court when the Miles bankruptcy case was finished, and he would proceed with the case. Miles filed notice of discharge July 6, 1995. (See Appendix G, Pgs. 23a-26a). Now after several attempts to obtain enforcement of the district court's order 9/18/94, Miles is pursuing this third appeal just to get the district court to honor its own ruling.

This is reminiscent of the Court ordering Miles to file an amended complaint 9/28/92 [32] early in the proceedings, and when Miles filed his amended complaint 10/8/92 [33], as required by the Court's order, the same court struck the amended complaint, 10/14/92 [38], without any explanation. The Judge in this case has employed "catch 22" orders to dismiss Miles claims, whom he has determined without an evidentiary hearing is not entitled to a jury trial, or appeal, in conflict with statutory and Constitutional laws. (See Appendix I, Pgs. 42a-43a)

8/28/96 "ORDER denying [199-l] motion for relief from judgment or order, denying [199-2] motion for oral hearing ..."

9/5/96 [204] "NOTICE OF APPEAL of [200-1] Lawrence P. Miles."

***FIFTH CIRCUIT OPINION 4/17/97**

APPEAL. 96-20890 before Circuit Judges Reavley, Davis, and Barksdale:

"Lawrence Miles appeals from denial of two motions for relief pursuant to Fed. R. C. P. 60(b). Miles contends that an October 30, 1995, order closing his case from which he did not appeal is void because the order barred him from future filings in the case. He argues that he never has been given an opportunity to present his case to a jury in open court."

"To the extent that Miles seeks relief pursuant to Rule 60 (b)(4), the October 27, 1995, 4/17/97 judgment was not void. It did not preclude Miles from filing a notice of appeal."

Note: No Supreme Court or Fifth Circuit case precedent cited. This part of the Fifth Circuit opinion is in conflict with procedural statutes and prior case law on the issue as per 11 Charles A. Wright, ET AL., Supra, Section 2862; accord *New York Life V. Brown,* 84 F.3d 137, (1996). (See Appendix A and I)

"when the decision is based on a void judgment under 60(b), the judgment is either void or it is not....the judgment is void if it acted in a manner inconsistent with due process of law."

The court went on to ignore this precedent, preferring to back the lower court in its post appeal moot orders, even though such interpretation violates Miles' right to equal protection under the law. U.S. Const. Amendments V and XIV. Further, reasonable procedures were not followed as required by *Griffin V. Illinois,* 351 U.S. 12, 590 (1956). Miles cannot be arbitrarily excluded from exercising his right to appeal, and must be afforded " a fair opportunity to obtain an adjudication on the merits of the appeal." *Evitts V. Lucey,* 469 U.S. 387, 405 (1985).

(OPINION Cont.)

"To the extent that Miles seeks relief pursuant to 60(b)(6), the denial of Miles's motion was not an abuse of discretion. *Travelers Ins. Co. V. Liljeberg Enterprizes., Inc.* , 38 F.3d 1404, 1408 (5th Cir. 1994). Miles's appeal is lacking in arguable merit and is frivolous. *Howard V. King* 707 F. 2d 215, 219-20 (5th Cir. 1983).

Miles is warned that future frivolous appeals in this action will result in sanctions against him. Finally, Miles motion to expedite his appeal and for publication of the opinion in this case is denied. APPEAL DISMISSED. 5th, Cir. R. 42.2 SANCTIONS WARNING ISSUED."

DISCUSSION

Miles looked to the case: *Travelers Ins. Co. V. Liiljberg Enter. Inc.,* Id to understand the ruling and found under Note 2: " Generally, when appeal is taken, district court is divested of jurisdiction except to action to aide appeal.."

Miles would agree that normally a direct appeal is the method to obtain review and relief, but because Miles had filed appeal notices in two instances and the appeal had been docketed before the post appeal order which forbade Miles to file further under the same styled case number, Miles did not file a 3rd. notice. (See Miles' Affidavit on Pgs. 38a-41a of Appendix H).

New York V. Brown, Id in Note 11, "District court has no discretion in deciding motion for relief from final judgment based on a void judgment, since judgment is void, or it is not."

Further under note, 13, "judgment is void only if court that rendered it lacked the jurisdiction, or if it acted in manner inconsistent with due process of law." That is exactly what Miles has asserted. The post appeal order acted to deprive Miles' statutory right of appeal. If it is the opinion of the Fifth Circuit that Miles' arguments are without merit, certainly Miles has presented the fact and reasonable argument that the disputed order was issued post appeal, and therefore without force under law, under its own FRAP Rule 3.

Therefore the ruling of sanctions and the finding "there is no arguable merit on appeal" is a warped judgment intended to chill Miles plans to appeal further and cover up the actions of the Fifth Circuit and the District Court.

CHICKEN OR EGG QUESTION

Which comes last, the appeal by a litigant, or the Court's post appeal orders? According to the 5th. Circuit opinion, the right of appeal would never be secure. A judge can defeat perfection of appeal by issuing a post appeal order, closing the case. Or as in this case, forbidding the petitioner from filing any further in his court, or any other court without the permission of the judge. That is exactly what this court has done. And then, what about the court's so called "final judgment" issued earlier on 5/3/93, dismissing the case without prejudice. Now the Fifth Circuit is saying that Judge Hoyt's post appeal order is an indefinite stay or permanent injunction when the judge did not phrase it as such. The Fifth Circuit panel through legalistic smoke and mirrors ruled the post appeal order a final order, even though there are unresolved issues and parties as in Miles first appeal dismissed for lack of jurisdiction. *Kelly V. Lee's Old Fashioned Hamburgers, Inc.,* 908 F.2d 1218, 1220 (5th Cir. 1990) would require certification under Rule 54(b) or "language in the order either independently or together with related parts of the record reflects the trial judge's clear intent to enter a partial final judgment under rule 54(b)..... ." Said order would not be appealable as a final judgment under any of the requirements for appeal.

In fact, petitioner asserts that the case is technically still open as to all issues, because the district court has not disposed of all the parties and issues. Just because the district court says the case is closed, doesn't make it so anymore than when the district court said his earlier judgment was final and the Fifth Circuit found otherwise. Further, Miles is saying that such order "closing the case" and forbidding Miles to make further filings is not a final order and is contradictory, in effect, to the court's prior final orders dismissing the case without prejudice. Even if such a precedent were backed by procedural statute, which it is not, a common pro se litigant can not be expected to be sophisticated enough to deal with such "catch 22" procedural double dealing by a judge.

Miles is certainly entitled to the relief under Fed Rule 60 Section 2862. Note: *Williams V. Brooks*, C.A. 5th. 1993, 996 F.2d 728, 730. "When district court dismissed plaintiff's case during pendency of defendants interlocutory appeal, though divested of jurisdiction, judgment was void for lack of jurisdiction."

Miles asserts that it is not necessary to appeal a void judgment because it is a nullity, and without force and effect in law. Further, applicable procedural precedent requires appeal notices to be considered liberally by the appeals court.

F.R.A.P., Rule 3, Note 7

"Court of appeal was bound to liberally construe notice of appeal petition, since it was a pro se petitioner. *Bach V. Coughlin*, C.A.III,1974, 508 F.2d 303.

Miles filed two appeals and paid two fees to perfect the appeal. The appeal case number was assigned and then the court issued its post appeal order. A third appeal and fee requirement would not be equal teatment under the law. Due process requires that reasonable procedures be followed. See *Griffin V. Illinois,* 351 U.S. 590 (1956).

One appeal notice together with one filing fee divests the district court of jurisdiction. Such action by a court and ruling by the Fifth Circuit, not only serves to put a chill on appeals by litigants as per, *United States V. Vontsteen,* 950 F. 2d 1086, 1093 (5th Cir. 1992), but is unconstitutional chicanery on its face.

Miles asserts that the District Court took a "non-judicial" action and the Fifth Circuit improperly ratified that action. Both post appeal judgments are without force or effect in law.

See *Yates V. Hoffman Estates* (1962, DC IL) 209 F. Supp. 757.

"When a judge exceeds his jurisdiction and grants or denies that beyond his lawful authority to grant or deny, he has perpetuated a 'non judicial' action."

See *Pierson V. Ray* (1967) 386 U.S. 547.

"It is well established that judges may be enjoined from interfering with citizens rights."

See Miles' **MEMORANDUM OF LAW** (Appendix I, Pgs. 42a-43a).

Miles, not wanting to skip any steps to perfect this appeal to the Supreme Court, and hopeful that other judges on the Fifth Circuit might come to his aide, filed the following:

5/02/97 "Appellant's Suggestion For Rehearing En Banc."

5/22/97 On Appellant's Suggestion For Rehearing En Banc: Before Reavley, Davis and Barker:

"No active judge of this court having voted to grant rehearing en banc, IT IS ORDERED that the suggestion is an abuse of procedure for rehearing en banc. Accordingly, Miles is sanctioned in the amount of $1,000. The clerk of this court will accept no further filings from Miles until the $1,000 monetary sanction is paid. See 5th Cir. R. 35.1."

DISCUSSION

Regrettable as the ruling was to Miles, this ruling was not noticed to the petitioner as late as June 20, 1997 when Miles received a letter from the Fifth Circuit Clerk, Barry Stiebing, notifying Miles that the sanction was to be paid within 30 days of 5/22/97. Miles, not yet ever receiving the order, promptly sent the Court the $1,000 sanction with a letter asking the clerk to send a copy of the order. When there was no response to the letter, Miles, called Clerk Barry Stiebing who responded that he could not find the letter addressed and sent to him certified mail, return receipt, or any information that the sanction had been paid. Miles, who had similar problems as to lost filings at the District Court level when he filed the Bankruptcy Notice of Discharge July 6, 1995, could not take the clerk's "blank" response any further, so he filed a final motion to the Fifth Circuit:

7/22/97 "MOTION TO SET ASIDE AND REISSUE."

Miles cited the order had not been noticed to him, the fact that he had paid the sanction, and requested the court to reissue the order to preserve the 90 days provided for further appeal. Thus came the first order from the Fifth Circuit in over 5 years granting relief from a mistake.

7/22/97 "ORDER: in response to appellant's motion to set aside and reissue. IT IS ORDERED that the effective date of this Court's order entered on May 22, 1997, shall be June 30, 1997. The 90 day period for filing a petition for writ of certiorari will commence from June 30, 1997."

REVIEW OF HAINES V. KERNER

In, *Haines V. Kerner, Id,* the Supreme Court held that a pro se petitioner, as to his pleadings, "however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence.... We cannot say with assurance that under the allegations of the pro se complaint, we hold to less stringent standards than formal pleadings by lawyers, it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley V. Gibson,* 355 U.S. 41, 45, 46 (1957). See *Dioguardi V. Durning* 13 F. 2d 774 (CA21944). **Accordingly, although we intimate no view whatever on the merits of petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof**. The judgment is reversed and the case is remanded for further proceedings." (See Appendix D, Pgs. 8a-10a)

Consistent with the standard outlined above Miles asserts to the Supreme Court, the ultimate arbitrator of disputes, that he had no fair opportunity to present his proof. In consideration of Miles pleadings, described as "ludicrous" by Judge Hoyt, Miles calls on the Supreme Court to apply the standard in *Haines V. Kerner, Id,* which opinion said that no matter how **"inartfully pleaded, the pro se litigant is entitled to the opportunity to offer proof."** Miles had no opportunity to call his witnesses, present his evidence, cross examine the witnesses or show proof according to the Federal Rules of Evidence. (See Appendix D, Pgs. 8a-10a).

RESPONDENTS' ASSERTIONS

The defendants assert that Miles had his day in Court May 3, 1993 when the court attempted to reach the merits of the case through discussion. Miles asserts that discussion, without doing so within the traditional and statutory rules of evidence, or before a jury as reserved under Amendment 7 of the U.S. Constitution, is not equal justice under the law, or "reasonable procedure", as required by due process, in *Griffin V. Illinois*, 351 U.S. 12, 590(1956). The defendants assert that they were not required to obtain relief from the bankruptcy court at Los Angeles, California, before they filed their contested foreclosure documents, some three days after Miles filed his bankruptcy case. Title 11 U.S.C. 362 states that "no further foreclosure process may be instituted after filing of bankruptcy without relief from the bankruptcy court." (See Appendix F, Pgs. 18a-22a).

Defendants assert that they were not required to observe Texas foreclosure and homestead laws, or required to construe the deeds of trust and security agreements, "strictly" when Texas Article 3810, section 11 requires strict compliance and a hearing in District Court when a foreclosure is contested. (See *Homestead Designation*, Appendix J, Pgs. 4a-45a). Further, the defendants would assert that the Fifth Circuit and Supreme Court should not consider liberally the requirements for appeal notice as provided for by Title 28, Rule 3, Note 7, pursuant to *Bach V. Coughlin*, A.P.III.1974, 508 F.2d 303. Finally, the defendants would assert that Miles failure to file a 3rd. appeal, even though the district court forbade him from doing so, should be held against him, even though as a pro se litigant Miles is entitled to consideration and relief as per the Supreme Court precedent of *Haines V. Kerner*, *Id*. Miles has brought his civil action to the courts and asked the court to apply the rules fairly and equally, without bias, as the rules would have applied to any litigant. When the court has unfairly denied basic statutory and Constitutional rights, Miles has asserted that for a common **pro se** litigant, there are specific rules and precedents, to rely on. The courts have not only ignored Miles protestations to date, the Fifth Circuit has gone beyond the bounds of the Constitution, the courts own rules and precedents, and denied Miles even the appearance of a fair adjudication on the merits of his claims. The district court and the Fifth Circuit have repeatedly issued conflicting, confusing and/or moot orders, attempting to keep Miles from presenting his evidence in open court, and from perfecting an appeal.

The Court of Appeals has considered the two notices of appeal strictly, denying jurisdiction, rather than applying the law and precedents which requires liberal consideration. In fact, the court of appeals has flip-flopped back-n-forth on the question of the unresolved issues and parties; declared rulings deemed final judgments by the district court, not final; and moot post appeal orders have been deemed final, contrary to established statutory and case law.

CONCLUSION

It is accepted that in the face of wrongdoing by a lower court, that appeal courts are reluctant to intervene and set aside errant rulings. Further, the Supreme Court has no legal obligation to correct the errors of the appeals or district court. However, when the district court and the entire Fifth Circuit blindly ignore their oaths to the Constitution of the United States, Amendments V, VII, and XIV, and their own procedural rules and precedents, Title 28, U.S.C. Rule 3, Note 7, and fail to recognize or consider the Supreme Court precedent of *Haines V. Kerner*, *Id*, and when the end result of all these errors results in the all powerful defendants, the Bank, unlawfully seizing the Homestead (See Homestead Designation, Appendix J, Pgs. 44a-45a) of a common citizen without the minimum due process requirement of a fair hearing, such a compelling case cries out for review by the United States Supreme Court.

THEREFORE, PREMISES CONSIDERED, this common pro se petitioner comes and requests that the Supreme Court of the United States grant Certiorari and review the rulings of the Fifth Circuit Court of Appeals in the case of ***LAWRENCE P. MILES V. SUNBELT NATIONAL BANK, ET AL.***

Respectfully submitted,

/s/ **LAWRENCE P. MILES,**
PETITIONER IN PROPRIA PERSONA
P.O. Box 1949
Bellaire, TX 77402
(713) 981-7683

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20890
Conference Calendar

LAWRENCE P. MILES,
Plaintiff-Appellant,
versus

SUNBELT NATIONAL BANK, ET AL
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-92-1246

Before Reavley, Davis, and Barksdale, Circuit Judges,
PER CURIAM:*
Lawrence P. Miles appeals from denial of two motions for relief pursuant to FED. R. CIV. P. 60(b). Miles contends that an October 30, 1995, order closing his case from which he did not file an appeal is void because the order barred him from future filings in the case. He argues that he has never been given an opportunity to present his case to a jury in open court.

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* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

APPENDIX A (Cont.)

No. 96-20890

To the extent that Miles seeks relief pursuant to Rule 60(b)(4), the October 30, 1995, judgment was not void. It did not preclude Miles from filing a notice of appeal. To the extent that Miles seeks relief pursuant to Rule 60(b), the denial of Miles's motions was not an abuse of discretion. *Travelers Ins. Co. V. Liljeberg Enter., Inc.* 38 F.3d 1404, 1408 (5th Cir.1994).

Miles's appeal is lacking in arguable merit and is frivolous. *Howard V. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). Miles is warned that future frivolous appeals in this action will result in sanctions against him. Finally, Miles's motion to expedite his appeal and publication of the opinion in this case is DENIED.

APPEAL DISMISSED. 5TH CIR. R. 42.2 SANCTIONS WARNING ISSUED.

FILED: APR 17, 1997 (INITIALED)

See Pgs. 3a-4a in Appendix A (Cont.) for related and subsequent Fifth Circuit Opinions.

APPENDIX A (Cont.)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20890

Lawrence P. Miles,

Plaintiff-Appellant

vs.

Sunbelt National Bank, ET AL.,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-92-1246

ON SUGGESTION FOR REHEARING EN BANC

Before REAVLEY, DAVIS, and BARKSDALE, Circuit Judges. PER CURIAM:

No active judge of this court having voted to grant rehearing en banc, IT IS ORDERED that the suggestion is an abuse of the procedure for rehearing en banc. Accordingly, Miles is sanctioned in the amount of $1,000. The clerk of this Court will accept no further filings from Miles until the $1,000 monetary sanction is paid.
See 5TH CIR. r. 35.1.
FILED: MAY 22, 1997.

FOR THE COURT
/S/ THOMAS M. REAVLEY
UNITED STATES CIRCUIT JUDGE

APPENDIX A (Cont.)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20890

Lawrence P. Miles,
Appellant

vs.

Sunbelt National Bank, ET AL.
Appellees

Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-92-1246

ORDER

In response to appellant's motion to set aside and reissue. IT IS ORDERED that the effective date of this court's order entered May 22, 1997, shall be June 30, 1997. The 90 day period for filing a petition for writ of certiorari will commence from June 30, 1997.

FILED: May 22, 1997.

FOR THE COURT:
/S/ THOMAS M. REAVLEY
UNITED STATES CIRCUIT JUDGE

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. H-92-1246

LAWRENCE P. MILES,
Plaintiff,

VS.

SUNBELT NATIONAL BANK,
LAUREN I. SCHVERAK, &
MICHAEL B. MASSEY,
Defendants.

ORDER

The plaintiff's motion to consolidate (Instrument#195) is moot. This case is closed and no further filing shall be made under this styled and numbered cause.
It is so ORDERED.

Signed this 27 day of October, 1995.

/s/ KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 95-20736
Summary Calendar

LAWRENCE P. MILES,

Plaintiff-Appellant,

versus

SUNBELT NATIONAL BANK, ET AL.,

Defendants-Appellees

Appeal from the United States District Court
of the Southern District of Texas
USDC No. CA-H-92-1246

Before REAVLEY, DUHE AND WIENER, Circuit Judges.
PER CURIAM:*

This court must examine the basis of its jurisdiction on its own motion if necessary. **Mosley v. Cozby**, 813 F.2d 659, 660 (5th Cir. 1987).

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* Pursuant to Local Rule 47.5, the court determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

APPENDIX C (Cont.)

We earlier held that the district court's orders granting partial summary judgment, granting protective order, and dismissing Lawrence Miles's claims were not appealable final judgments. Our earlier holding constitutes the law in the case, *Chevron U.S.A., Inc. V. Traillour Oil Co.*, 987 F.2d 1138, 1150 (5th Cir. 1993); Miles may not appeal those orders.

Miles filed no notice of appeal following the district court's order closing the case. Even though the closing the case did not dispose of the counterclaim, it was nevertheless a final order. See Lewis V. Beddingfield, 20 F.3d 123, 124 (5th Cir. 1994) **(indefinite stay of suit is final order);** Johnson v. Texas, 878 F.2d 904, 905 (5th Cir. 1989).

We lack jurisdiction to review the order. *United States V. Carr*. 979 F.2d 51, 55 (5th. Cir. 1992).

Miles's madamus request is DENIED as moot. His motion to expedite his appeal also is DENIED as moot.

APPEAL DISMISSED.
FILED JUNE 13, 1996 (INITIALED)

APPENDIX D

HAINES *V.* KERNER, ET AL.
CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

Prisoner's **pro se complaint seeking to recover damages** for claimed physical injuries and deprivation of rights in imposing disciplinary confinement **should not have been dismissed without affording him the opportunity to present evidence on his claims. 427 F. 2d 71, reversed and remanded.**

Stanley A. Bass, by appointment of the Court, 401 U.S. 1008, argued the case of the petitioner. With him on the briefs were Jack Greenberg, James M. Nabrit III, William B. Turner, Alice Daniel and Max Stern.

Warren K. Smoot, Assistant Attorney general of Illinois, argued the cause for the respondents pro hac vice. With him on the brief were William J. Scott, Attorney General, Joel M. Flaum, First Assistant Attorney General, and James A. Zagel, Morton E. Friedman, and Jayne A. Carr, Assistant Attorneys Generals.

Briefs of amici curiae were filed by Charles H. Baron for Boston College Center for Corrections and the Law, and by Julian Tepper and Marshall J. Hartman for the national Law Office of the National Legal Aid and Defender Assn.

PER CURIAM.

Petitioner, an inmate at the Illinois State Penitentiary, Menard, Illinois, commenced this action against the Governor of Illinois and other state officers and prison officials under the Civil Rights Act of 1871 Stat. 13, 42 U.S.C. Section 1983, and 28 U.S.C. Section 1343 (3), seeking to recover damages for claimed injuries and deprivation of rights while incarcerated under a judgment not challenged here.

APPENDIX D (Cont.)

OCTOBER TERM, 1971

Petitioner's pro se complaint was premised on alleged action of prison officials placing him in solitary confinement as a disciplinary measure after he had struck another inmate on the head with a shovel following a verbal altercation. The assault by petitioner on another inmate is not denied. Petitioner's pro se complaint included general allegations of physical injuries suffered while in disciplinary confinement and denial of due process in steps leading to the confinement. The claimed physical suffering was aggravation of preexisting foot injury and a circulatory ailment caused by forcing him to sleep on the floor of his cell with only blankets.

The District Court granted respondents' motion under Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss the complaint for failure to state a claim upon which relief could be granted, suggesting only under exceptional circumstances should courts inquire into the internal operations of state penitentiaries and concluding that petitioner had failed to show a deprivation of federally protected rights. The Court of Appeals affirmed, emphasizing that prisons are vested with "wide discretion" in disciplinary matters. We granted certiorari and appointed counsel to represent petitioner. **The only issue now before us is petitioner's contention that the District Court erred in dismissing his pro se complaint without allowing him to present evidence on his claims.**

APPENDIX D (Cont.)

Per Curiam

Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for opportunity to offer supporting evidence. we cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley V. Gibson*, 355 U.S. 41, 45-46 (1957). See *Dioguardi V. Durning*, 139 F. 2d 774 (CA2 1944).

Accordingly, although we intimate no view whatever on the merits of petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof. The judgment is reversed and the case is remanded for further proceedings consistent herewith.

Reversed and remanded.

Mr. Justice Powell and Mr. Justice Rehnquist took no part in consideration or decision in this case.

APPENDIX E

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

FILED: AUGUST 10, 1994

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

Nos. 93-2058, 93-2384, & 93-2442
Summary Calendar

LAWRENCE P. MILES,
Plaintiff-Appellant,
VERSUS
SUNBELT NATIONAL BANK, ET AL.,
Defendants-Appellees.

Appeals from the United States District Court
for the Southern District of Texas
(H-92-CV- 1246)

Before DUHE', WIENER, and STEWART, Circuit Judges.

PER CURIAM:'

Lawrence P. Miles sued Sunbelt National (Sunbelt);

---

1. Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." pursuant to that Rule, the Court has determined that this opinion should not be published.

APPENDIX E (Cont.)

Lauren I. Schverak, executive vice-president and loan officer of Sunbelt; and Michael B. Massey, an attorney for Sunbelt, alleging breach of contract, fraud, usury and racketeering. Jurisdiction was based on diversity, and the Seventh Amendment to the U.S. Constitution.

The action arose out of a verbal agreement with Sunbelt to lend Miles 80% of the appraised value of certain properties located in Houston, Texas. Miles alleged that Sunbelt falsely represented its intention to lend him the money and caused him to refinance his business; purchase distressed property; cross collateralize the two properties, waive a long-standing business homestead, and sign unfair promissory notes, deeds of trust, and security agreements. Miles further alleged that the bank lent "unlawful money" at interest rates 20 times higher than the agreed rate and that the defendants induced him to sign assignments and waivers that permitted Sunbelt to take possession of the properties when he defaulted on the loan.

Sunbelt moved for a preliminary injunction alleging that, after Miles and his wife, Patricia, defaulted on the loan, and title to the property passed to Sunbelt, Miles continued to make demands on the tenants of the property to pay the rent to him. Because Miles had recently filed for bankruptcy and Sunbelt believed that Miles could not compensate it for any losses, Sunbelt sought to enjoin Miles from communicating with the tenants. The district court ordered Miles to file an amended complaint, and advised that a temporary restraining order was not necessary because Miles had agreed not to contact the tenants.

APPENDIX E (Cont.)

Miles filed a second amended complaint and a motion to proceed *in forma pauperis (IFP)*. The district court granted the motion to proceed IFP, denied the defendants' motions to dismiss, and granted the defendants' motion for a preliminary injunction. Miles moved for partial summary judgment on his claim of illegal foreclosure. He alleged that any foreclosure action was automatically stayed because he filed for bankruptcy protection. Massey opposed the motion because Miles had not presented competent summary judgment evidence, the claim of illegal foreclosure was raised in the second amended complaint which had been stricken,[3] and the foreclosure occurred three days prior to Miles's filing for bankruptcy. Massey also filed a cross-motion for partial summary judgment on the issue of illegal foreclosure. Sunbelt filed a counter-claim and a third-party complaint against Patricia Miles to recover the unpaid amounts due under the loans. Miles moved for modification or stay of the district court's order granting the preliminary injunction, and the district court denied the motion. Miles appealed this denial in Cause No.93-2058. Miles filed a second motion for partial summary judgment on the issue of illegal foreclosure. The district court denied Miles's motion and granted the cross-motion for partial summary judgment, finding that the foreclosures were valid, the transfer of title to the properties effected by the trustee's deeds were not avoidable by Miles's filing the bankruptcy petition, and the automatic stay provisions were not violated. Miles filed notice that he and his wife had sought protection under Chapter 13 of the Bankruptcy Code.[4]

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3. The district court subsequently granted Miles motion to file a second amended complaint. R.518;*see*R. 5,519-42.

4.The petition was converted to a Chapter 11 petition.

APPENDIX E (Cont.)

He asked that the district court "give full faith and credit" to the Automatic [sic] Stay by enjoining any further prosecution of the Defendants['] Counter suit against [him and Patricia.]" *Id.* The Miles moved to halt all proceedings against them pursuant to 11 U.S.C. § 362 and for a continuance to obtain counsel. The district court convened for trial, granted the motion to dismiss Massey, denied Miles's motion for a continuance, and dismissed the remaining claims **without prejudice** for want of prosecution and failure to cooperate in the trial of the case. In a written order, the district court stated that the Miles's failed to state a cause of action in fraud, tort, or contract. The district court also stayed the defendants' cross-claim for the unpaid amounts due on the loan pending the resolution of the bankruptcy proceeding. Miles filed a notice of appeal in this Court and a motion to consolidate his appeals.[5] This Court consolidated Cause Nos.93-2058, 93-2442, and 93-2384. Miles has also moved for a writ of mandamus and to expedite his appeals and his mandamus request.We dismiss the appeals and deny the motions.

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5. This Court denied Miles' motion to consolidate Nos. 93-2058 and 93-2248 and granted the appellees' motion to dismiss No.93-2248. Miles filed amotion to amend appeal No.93-2384 (emergency motion for writ of mandamus, which was denied, R. 1, 1348) to include a demand for a transcript of the hearing. R.1, 1345. The transcript is part of the record on appeal. See R.8

6. Cause No. 92-2058 is an appeal from the entry of a preliminary injunction and the district court's refusal to stay or modify the preliminary injunction. Cause No. 93-2384 is an emergency motion for a writ of mandamus to provide a transcript of the hearing and an appeal from the district court's orders dismissing the case, granting a partial summary judgment for illegal foreclosure, and enjoining Miles from contacting the tenants.

APPENDIX E (Cont.)

Discussion

Miles seeks to appeal of the district court dismissal without prejudice of his claim that he was fraudulently induced to enter into financial arrangement with Sunbelt and partial summary judgment in favor of the defendants on the claim of illegal foreclosure. See Blue brief, B-1,18-20. We first address the question of our jurisdiction. See Thompson V. Betts, 754 F.2d 1243, 1245 (5th. Cir 1985). "Federal appellate courts have jurisdiction over appeals only from (1) a final decision under 28 U.S.C. Section 1291; (2) a decision that is deemed final due to jurisprudential exception or that has been properly certified as final pursuant Fed. R. Civ. P. 54(b); and (3) interlocutory orders that fall into specific classes, 28 U.S.C. Section 1292(a), or that have been properly certified for appeal by the district court, 28 U.S.C. Section 1292(b). " Arkanase V. Livingwell, Inc., 981 F.2d 807, 809, 805-10 (5th. Cir. 1993). The district court dismissed Miles's claims but stayed Sunbelt's Counterclaim to recover the unpaid amount on the loan pending the resolution of the bankruptcy proceeding. 11 U.S.C. Section 362. ***Therefore, the litigation is not final as to all of the parties***. Nor is the challenge to the judgment an interlocutory order under section 1292. The question before the Court then narrows to whether the district court directed the entry of judgment pursuant to Rule 54(b). **In Kelly V. Lee's Old Fashioned Hamburgers, Inc., 908 F.2d 1218, 1220 (5th. Cir. 1990)(en banc),** we

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Cause No. 92-2442 is an appeal from the orders dismissing the case and granting partial summary judgment.

APPENDIX E (Cont.)

held that an order is appealable if "language in order either independently or together with related parts of the record reflects the trial judge's clear intent to enter a partial final judgment under Rule 54(b)....." In Kelly , the Court held that the requirements of 54(b) were satisfied and partial final judgment was appropriate because the record contained. " a minute entry directing the prevailing defendant to prepare and submit 54(b) judgment to the court. " Id. at 1221-22 (internal quotation omitted). In contrast, the Court overruled Mills V. Zapata Drilling Co., Inc., 722 F.2d 1170 (5t Cir. 1983) because "[n]either the order appealed from nor related pleadings in the record recited Rule 54(b)." Id. at 1221. **Although the district court advised Miles at the preliminary hearing that he could go home and start his appeal,** R. 8, 61, **and then entered what is termed a "Final Judgment,"** R.1, 1289, the record contains neither a motion requesting entry of judgment under Rule 54(b) nor an express reference in the order to indicate that the judgment has been certified as a final judgment pursuant to Rule 54(b). See Kelly, 908 F.2d at 1220-21. Under the holding of Kelly, we do not have appellate jurisdiction, and the appeal must be dismissed. See Arkanase, 981 F.2d at 810. ISSUE 2: No.. 92-2058. Miles seeks to appeal the district court's order granting a preliminary injunction prohibiting Miles from communicating with the tenants of the property and the order refusing to stay or modify the injunction. Blue brief C-1, 7-8; see R. 6, 313-14.

APPENDIX E (Cont.)

"Section 1292(a)(1) authorizes appeals from interlocutory orders that grant or deny an injunction. This statutory provision, however, does not authorize appeals from orders that compel or restrain conduct pursuant to the court's authority to control proceedings before it, even if order is cast in injunctive terms. " Hamilton V. Robertson, 854 F.2d 740, 741 (5th Cir. 1988) (internal quotation and citation omitted).

The injunction prohibiting contact with the tenants is more in the nature of a protective order, even though it is labeled a preliminary injunction. Prior to the order, Miles agreed not to contact the tenants at the property. R. 6, 258. Therefore, the order only served to maintain the status quo and did not pertain to the merits of Miles's suit. See Siebert V. Great N. Dev. Co., 494 F. 2d 510, 511 (5th. Cir. 1974). Accordingly, the orders granting and refusing to modify or stay the preliminary injunction are not "appealable order[s] of the sort contemplated by Section 1292(a)." Id. The appeal from the orders must be dismissed.

Motions DENIED; appeals DISMISSED.

APPENDIX F

NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 7 OF THE BANKRUPTCY CODE

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
AT LOS ANGELES

U.S. BANKRUPTCY COURT
ROY BALL FEDERAL BUILDING
255 E. TEMPLE STREET
LOS ANGELES, CA 90012

NOTICE OF COMMENCEMENT OF CASE
UNDER CHAPTER 7 OF THE
BANKRUPTCY CODE,
MEETING OF CREDITORS, AND FIXING OF
DATES
(Individual or Joint Debtor Asset Case)
IN RE (NAME OF DEBTOR)
LAWRENCE P. MILES
AKA/DBA: LON P. MILES,
LAWRENCE P. MILES,
STAR GROUP SERVICES (S.G.S.),
SOC. SEC. & TAX ID NOS.
224-56-8292
ADDRESS OF DEBTOR
250 DOUGLAS ST
PASADENA, CA 91104
CASE NUMBER: LA 92-844-245B
FILED:7/10/92

APPENDIX F (Cont.)

MEETING OF CREDITORS
DATE: OCT. 31,1994
HOUR: 10.30A.M

AT: U.S. TRUSTEE HEARING ROOM
221 N. FIGUEROA STREET
SUITE 101
LOS ANGELES, CA

FILING CLAIMS - DEADLINE TO FILE A
PROOF OF CLAIM: JAN.30, 1995
THIS CASE IS A CONVERTED CASE ORIGINALLY
FILED UNDER CHAPTER 11 AND CONVERTED ON
9/02/94

DEBTOR'S ATTORNEY
ROY E. PETERSON #153455
FALVEY AND PETERSON
225S LAKE AVE 9TH FLOOR
PASADENA, CA 911O1
TELEPHONE: 818-795-0205

TRUSTEE
PETER C. ANDERSON, ESQ.
ROQUEMORE, PRINGLE & MOORE INC
6055 EAST WASHINGTON BLVD #430
LOS ANGELES, CA 90040-2466
TELEPHONE 213-727-9589

APPENDIX F (Cont.)

DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR OR TO DETERMINE DISCHARGEABILITY OF CERTAIN TYPES OF DEBTS: DEC. 30, 1994

COMMENCEMENT OF CASE. A petition for liquidation under chapter 7 of the Bankruptcy Code has been filed in this court by or against the person or persons named above as the debtor, and an order for relief has been entered. You will not receive notice of all documents filed in this case. All documents filed with the court, including lists of the debtor's property, debts, and property claimed as exempt are available for inspection at the office of the clerk of the bankruptcy court.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS. A creditor is anyone creditor to whom the debtor owes money or property. Under the Bankruptcy Code, the debtor is granted certain protection against creditors. Common examples of prohibited actions by creditors are contacting the debtor to demand repayment, taking action against the debtor to collect money owed to creditors or to take property of the debtor, and starting, **or continuing foreclosure actions,** repossessions, or wage deductions. If unauthorized actions are taken by a creditor against a debtor, the court may penalize that creditor. **A creditor who is considering taking action against the debtor or the property of the debtor should review section 362 of the Bankruptcy Code and** may wish to seek legal advice.

APPENDIX F (Cont.)

MEETING OF CREDITORS. The debtor (both husband and wife in a joint case) is required to appear at the meeting of creditors on the date and at the place set forth above for the purpose of being examined under oath. Attendance by creditors at the meeting is welcomed, but not required. At the meeting, the creditors may elect a trustee other than the one named above, elect a committee of creditors, examine the debtor, and transact such other business as may properly come before the meeting. The meeting may be continued or adjourned from time to time by notice at the meeting, without further written notice to creditors.

LIQUIDATION OF THE DEBTOR'S PROPERTY The trustee will collect the debtor's property and turn any that is not exempt into money. If the trustee can collect enough money and property from the debtor, creditors may be paid some or all of the debts owed to them.

EXEMPT PROPERTY. Under state and federal law, the debtor is permitted to keep certain money or property as exempt. If a creditor believes that an exemption of money or property is not authorized by law, the creditor may file an objection. An objection must be filed not later than 30 days after the conclusion of the meeting of creditors.

APPENDIX F(Cont.)

DISCHARGE OF DEBTS. The debtor is seeking a discharge of debts. A discharge means that certain debts are made unenforceable against the debtor personally. Creditors whose claims against the debtor are discharged may never take action against the debtor to collect the discharge debts. If a creditor believes that the debtor should not receive any discharge of debts under section 727 of the Bankruptcy Code or that a debt owed to the creditor is not dischargeable under section *523(a)(2),* (4), or (5) of the Bankruptcy Code, timely action must be taken in the bankruptcy court by the deadline set forth above labeled "Discharge of Debts." Creditors considering taking such action may wish to seek legal advice.

PROOF OF CLAIM. Except as otherwise provided by law, in order to share in any payment from the estate, a creditor must file a proof of claim by the date set forth above labeled "Filing Claims." The place to file the proof of claim, either in person or by mail, is the office of the clerk of the bankruptcy court. Proof of claim forms are available in the clerk's office of any bankruptcy court.

IF THE DEBTOR HAS NOT FILED A STATEMENT AND/OR SCHEDULE(S), THE DEBTOR MUST DO SO, OR OBTAIN AN EXTENSION OF TIME TO DO SO WITHIN 15 DAYS OF THE PETITION FILING DATE. FAILURE TO COMPLY WITH THIS REQUIREMENT, OR FAILURE TO APPEAR AT THE INITIAL SECTION 341(A) MEETING OF CREDITORS AND ANY CONTINUANCE THEREOF, WILL RESULT IN DISMISSAL OF THE CASE WITH A 180-DAY PROHIBITION ON FILING ANOTHER CASE, UNLESS LEAVE OF COURT IS FIRST OBTAINED. FOR THE COURT, JON D. CERETTO, CLERK OF COURT, **DATED SEPT. 9, 1994**

APPENDIX G

LETTER NOTICE OF BANKRUPTCY DISCHARGE

To:
Clerk of Court
U.S. District Court
5300 Federal Bldg.
515 Rusk Street
Houston, TX 77208

FILED:
JULY 6,1995
Michael N. Milby, Clerk
95-421

RE: No. CA H-92-1246; Lawrence P. Miles vs. Sunbelt National Bank, Lauren I. Schverak and Michael B. Massey; In the United States District Court, Southern District of Texas, Houston Division.

Dear Clerk,

Please take Notice of and Register the attached:

Plaintiff's Notice: To The Above Court And All Parties In Interest of The Discharge Of All Claims By the Defendants and Cross Claims Alleged In Their Counter Suit By Chapter 7 Bankruptcy Case No. LA92-84424-SB And Related Chapter 13 and Chapter 11 Cases, and the attached and enclosed Certified Discharge of Debtor pursuant **11 USC Section 523 and Rule 4004(c)**.

APPENDIX G (Cont.)

Further, please bring to the attention of the Case manager for Judge Hoyt my request that the Court expedite the consideration of all Motions filed February 27, 1995, which have not been ruled on to date. Further, in said motions a request is made for an evidentiary hearing on all matters including the opportunity to call witnesses, present oral argument, cross examine all witnesses and evidence pursuant to the Supreme Court precedent in **Haines V. Kerner**, et al.

Respectfully submitted in person to the Clerk's Office.

/s/ Lawrence P. Miles
P.O. Box 1949
Bellaire, TX 77402
(713) 981-7683

Enclosure

LPM/lm

APPENDIX G (Cont.)

United States Bankruptcy Court
Central District of California
255 East Temple Street,
Los Angeles CA 90012

DISCHARGE OF DEBTOR

DEBTOR(S) INFORMATION:
BANKRUPTCY NO. LA92-84424-SB

MILES, LAWRENCE P.
SSN: 224-56-8292

CHAPTER 7
N/A
P 0 BOX 1949
BELLAIRE, TX 77402

The Court finds that a petition commencing a case under Title 11, United States Code, was filed by or against the person named above on July 10, 1992, and that an order for relief was entered under Chapter 7, and that no complaint objecting to the discharge of the debtor was filed within the time fixed by the Court (or that a complaint objecting to discharge of the debtor was flied and. after due notice and hearing, was not sustained);

IT IS ORDERED THAT:

1) The above named debtor is released from all dischargeable debts, except for those pending complaints which will be determined later.

APPENDIX G (Cont.)

2) **Any judgment heretofore or hereafter obtained In any Court other than this Court is null and void as a determination of the personal liability of the debtor with respect to any of the following:**

(a) **debts dischargeable under 11 U.S.C. Section 523;**
(b) unless heretofore or hereafter determined by order of this Court to be non-dischargeable, debts alleged to be excepted from discharge under clauses (2),(4),(6), and (15) of 11 U.S.C. Section 523(a);

3) **All creditors whose debts are discharged by this order and all creditors with judgments are declared null and void by paragraph 2 above are enjoined from institution or continuing any action or employing any process engaging in any act to collect such debts as personal liabilities of the above named debtor.**

For The Court
JON D. CERETTO
Clerk of Court

Dated: **June 19, 1995**

NOTE: Attached to the original is Certificate of Service which includes B.J. Williams at the Sunbelt National Bank and Paul Francis, Counsel for the Bank as well as Michael Massey at their respective addresses of record, all with the Clerk's stamp & seal dated 6/28/95. Will be furnished, upon request.

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LAWRENCE P. MILES

v. No. CA-H-92-1246

SUNBELT NATIONAL BANK,
LAUREN I. SCHVERAK, &
MICHAEL B. MASSEY.

RULE 60(B) MOTION FOR RELIEF FROM JUDGMENT OR ORDER AND REQUEST FOR ORAL HEARING

Lawrence P. Miles requests relief from a judgment or order of this Court dated October 30, 1995, as authorized by FED.R.CIV.P. 60(b)(1) and 60(b)(4).

Background

As the Court well knows, this case has a lengthy procedural history. The facts relevant to this motion, however, are few. Lon Miles, a pro se litigant, has prosecuted a lender liability case for more than four years. In 1994, the Fifth Circuit dismissed an appeal on the ground that none of several rulings made by this Court constituted a final judgment. *Miles V. Sunbelt National Bank*, Nos. 93-2058, 93-2384 & 93-2442 (Aug.10, 1994) Miles, however, surely can be excused the error.

APPENDIX H (Cont.)

This Court specified that one order was a "FINAL JUDGMENT" and repeated in the body of the order that "[t]his is a FINAL JUDGMENT. This language was no mistake; the Court drafted the order. Moreover, the Court orally advised Miles twice that he should "go home and start [his] appeal. The Fifth Circuit now has dismissed a second appeal by Miles, but for the opposite reason: As the Fifth Circuit views the record, an October 30, 1995 order entered by this Court an order not styled by this Court as a "final judgment" and not viewed by defendants as a final judgment--constitutes the "real" final judgment in this case. Miles V. Sunbelt National Bank, No. 95-20736 (June 13, 1996) Miles did not perfect an appeal from that order for the very good reason that this Court directed him not to do so, stating that "no further filing shall he made under this styled and numbered cause."

In sum, Miles, a pro se litigant, appealed when told by this Court that it was time to do so; the Fifth Circuit has ruled the appeal premature. Miles then refrained from appealing when told by this Court that he should not file anything; the Fifth Circuit has ruled a subsequent appeal tardy. The result is grossly unjust.

Miles believes that this Court truly did not intend to trick him and illegally threaten him. The Court has made it abundantly clear that it does not look on Miles' case with favor. The Court has done several things that would lead Miles to believe that this Court would make false statements ("This is a FINAL JUDGMENT") or would make illegal threats ("no further filing shall be made") to deny Miles his right to appellate review. Miles therefore respectfully asks that this Court grant a Rule 60(b) motion so that Miles is at least afforded due process of law: an opportunity to present the merits of his appeal to the Fifth Circuit.

APPENDIX H (Cont.)

Argument and Authority

A description of the current status of this case is worthy of Alice in Wonderland. This Court and the litigants see one case and one sequence of events; the Fifth Circuit sees something far different. Consider first the world as seen by the parties before the Fifth Circuit's ruling. This Court clearly intended the May 3, 1993 order to be a final judgment: Why else would this Court have titled it a "FINAL JUDGMENT"? By October 1995, with the multiplicity of motions and procedural maneuvers, court orders and appeals, Miles believes that the Court was under the impression that the case already had become final: That is why the October 30, 1995 order states that the case "is closed" and directs that "no further filing shall he made."

The Fifth Circuit, however, has chosen to see matters in a far different light. The final order, says the Fifth Circuit, is not a final judgment, no matter what the order says; the second order is a final judgment, no matter what the order says. While this Court--and even the defendants, in a moment of appellate candor undoubtedly would concede that not everything the Fifth Circuit has concluded represents the "truth," the two decisions are the "law of the case." *Chevron U.S.A., Inc. V. Traillour Oil Co.*, 987 F.2d 1138, 1150 (5th Cir. 1993). This Court is required by law to accept the Fifth Circuit's odd characterization of this Court's orders as "true" for purposes of this case, no matter what this Court--or everyone else--may have thought at the time. None of this, however, prevents the Court from granting relief under Rule 60(b).

APPENDIX H (Cont.)

In fact, Rule 60(b) relief is mandated both by considerations of fairness and by the clear language of the United States Constitution. Rule 60(b)(4) requires this Court to grant relief from a void judgment. FED. R. Civ. P. 60(b)(4). The mandatory nature of such a motion deserves emphasis. Typically, Rule 60(b) motions are entrusted to the sound discretion of the trial court. *New York Life Ins. Co. V. Brown,* 84 F.3d 137, 1996 U.S. App. LEXIS 11333, *13 (5th Cir. May 15, 1996). A Rule 60(b)(4) motion, however, "differs markedly from motions under the other clauses of Rule 60(b)." 11 CHARLES A. WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE § 2862 (1995).The Fifth Circuit has recently summed it up: "When the motion is based on a void judgment under rule 60(b)(4), the district court has no discretion--the judgment is either void or it is not." *New York Life,* 84 F.3d 137, 1996 U.S. App. LEXIS 11333 at *13. In this case, the Fifth Circuit has chosen to view a two-sentence order filed October 30, 1995 as a final order from which no appeal was taken. If that court is right, as this Court must assume, the October 30, 1995 order is void, because a judgment is void "if the court that rendered it . . . acted in a manner inconsistent with due process of law." 11 CHARLES A.WRIGHT, ET AL., *supra,* § 2862; *accord* New York Life, 84 F.3d 137, 1996 U.S. App. LEXIS 11333 AT *14. The fatal defect in the October 30, 1995 order is that it deprives Miles of his right to meaningful appellate review. Miles, like every citizen, has a constitutional right to due process of law, and to equal protection under the law. U.S. CONST. amends. V, XIV. Miles is aware of the fact that there is no inherent constitutional right to an appeal.

APPENDIX H (Cont.)

District of Columbia V. Clawans, 300 U.S. 617, 663 (1937). Nonetheless, if a right to appeal is granted to a litigant by statute, due process and equal protection considerations require that reasonable procedures be followed. *Griffin v. Illinois*, 351 U.S. 590 (1956). The United States Congress has guaranteed to Miles a statutory right to an appeal. *See, e.g.*, 28 U.S.C. § 1291. That right is reinforced and implemented by court rule. *See, e.g.*, FED. R. APP. P.3, 4. Miles therefore cannot be arbitrarily excluded from exercising his right to appeal, and must be afforded "a fair opportunity to obtain an adjudication on the merits of his appeal. "*Evitts V. Lucey*, 469 U.S. 387, 405 (1985). The violation of Miles' constitutional rights is blatant. The violation appears on the face of the order, which reads in relevant part as follows:

The plaintiffs motion to consolidate (instrument #195) is Moot. This case is closed and no further filing shall be made under this styled and numbered cause.

If the "case is closed" wording constitutes a final judgment, as the Fifth Circuit has ruled, then the "no further filing" language unconstitutionally forecloses Miles' right of appeal. A notice of appeal is required to invoke appellate jurisdiction. *United States* V. *Robinson*, 361 U.S. 220, 224 (1960). The notice of appeal, however, is a "further filing" in the case. *See* FED. R. APP. P. 3. Thus, by the order's plain language and without explanation or justification, Miles has been forbidden from taking a vital step necessary to exercise his appellate rights.

APPENDIX H (Cont.)

This is a per se violation of due process. The United States Supreme Court recognizes that "[the fundamental requisite of due process of law is the opportunity to be heard." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see also New York Life*, 84 F.3d 137, 1996 U.S. App. LEXIS 11333, at *14~15 (stating that "[u]nder our system of justice, the opportunity to be heard is the most fundamental requirement")]. Miles reasonably interpreted the "no further filings" language of the order as the equivalent of a permanent restraining order forbidding the filing of an appeal from that order. Miles had good reason to fear that the District Court might impose sanctions if he ignored a court order. The cumulative effect was to "chill" Miles' right of appeal, guaranteed by statute and reinforced by court rule. While most case law on denial of due process and equal protection rights by unwarranted restrictions on the right to appeal has developed in the context of criminal appeals, the Constitution's guarantee applies equally to civil litigants. One recent "local" example is the debate in the Texaco-Pennzoil litigation over whether the Texas requirement of a supersedeas bond violated Texaco's constitutional rights. See Texaco Inc. V. Pennzoil Co., 784 F.2d 1133, 1154 (2d Cir. 1986)(holding that the Texas requirement violated a litigant's due process right to appeal a civil judgment), *rev'd on other groun's*, 481 U.S. 1 (1987)(applying *Younger* abstention); *see also, e.g.*, *Broussard V. United States Postal Service*, 674 F.2d 1103, 107 (5th Cir. 1982)(government agency conceding that requiring a waiver of civil appellate rights as a condition of securing an administrative determination

APPENDIX H (Cont.)

would deny due process). Miles is aware of no case presenting this precise situation--an outright command not to appeal, with the implied threat of sanctions. Criminal cases, however, offer some useful analogies. For example, both the United States Supreme Court and the Fifth Circuit have condemned procedures whereby prosecutors once tried to discourage appeals by conditioning plea bargains on a waiver of appellate rights. *See, e.g., Blackledge V. Perry*, 417 U.S. 21, 28 (stating that by "upping the ante" on remand the government "can insure that only the most hardy defendants will brave the hazards of a *de novo* trial"); *North Carolina V. Pearce*, 395 U.S. 711, 724-25 (stating that "imposition of a penalty upon the defendant for having successfully pursued a statutory right of appeal . . would be . . . a violation of due process of law"); *United States V. Vontsteen*, 950 F.2d 1086, 1093 (*5th* Cir. 1992)(stating that "fear of vindictiveness may unconstitutionally deter a defendant's exercise of the right to appeal" and that "due process - requires that a defendant be freed of apprehension of such a retaliatory motivation").

Likewise, the Fifth Circuit has ruled that the right to appeal cannot be forfeited by an attorney who misleads the court and fails to file a timely notice of appeal. *Perez v. Wainwright*, 640 F.2d 596, 598 (5th Cir. 1981). It seems axiomatic that forfeiture of the right to appeal likewise should not be condoned when a court deceives a litigant, even by inadvertence.

APPENDIX H (Cont.)

Lon Miles does not believe the District Court intended to violate his constitutional rights. Indeed, Miles does not believe the Court ever viewed the October 30, 1995 order as the final ruling rendering the case ripe for appeal. The Fifth Circuit, however, has declared it so. This Court therefore is required to grant this 60(b)(4) motion and rescind the order because it violates Miles' constitutional rights. Miles is entitled to relief as a matter of this Court's sound discretion under Rule 60(b)(1) Rule 60(b)(1) permits relief from a final judgment or order for circumstances constituting "mistake, inadvertence, surprise, or excusable neglect." FED. R. Civ. P. 60(b)(l). In the event this Court decides for some reason that the October 30, 1995 order is not absolutely void, it should be set aside under Rule 60(b)(1), to prevent gross injustice. Unlike a 60(b)(4) motion, a 60(b)(1) motion is addressed to this Court's sound discretion. Nonetheless, many decisions hold that "discretion ordinarily should incline toward granting rather than denying relief, especially if no intervening rights have attached in reliance upon the judgment and no actual injustice will ensue." CHARLES A. WRIGHT ET AL., *supra,* § 2857.

Miles is a pro se litigant and a non lawyer. He reasonably interpreted the Court's remarks in the May 3, 1993 hearing and the language of the May 3, 1993 order as evidencing the Court's belief that a final judgment had been rendered, and that it was time to appeal. Miles' procedural steps, up to. and including the motion to consolidate addressed in the October 30, 1995 order, were all attempts to correct the record to reflect the fact that the judgment had become final at some earlier date.

APPENDIX H(Cont.)

His failure to appeal the October 30, 1995 order was due to the in terrorem "no further filings shall be made" language. Taken as a whole, these circumstances surely demonstrate "mistake, inadvertence, surprise or excusable neglect." The record in this case demonstrates, if anything, excessive efforts to appeal the merits of this Court's decision to the Fifth Circuit, even a tendency to "jump the gun" by interpreting a ruling as final when it was not. It is inconceivable that Miles' failure to appeal this particular order could have stemmed from some general neglect of the case: The numerous docket entries in this case speak for themselves. In determining whether 60(b)(1) relief is appropriate, this Court must take into account the fact that Miles is a non lawyer litigant. Pro se litigants generally are not held to the same standards as represented parties. *See, e.g., Haines V. Kerner,* 404 U.S. 519 (1971). This holds true in considering what constitutes "mistake, inadvertence, surprise or excusable neglect" under Rule 60(b)(1). *See, e.g., Meaur Servs., Inc. V. Dao,* 160 F.R.D. 563 (ED. Tex. 1995).

Miles' principal error, both in contributing to the entry of the October 30, 1995 order and in failing to appeal that order, consists of misunderstanding what constituted a "final judgment" in this case. His error is one shared by this Court, and by experienced counsel for defendants in this case as well. This Court obviously shared Miles' belief that the May 3, 1993 order was a final and appealable judgment: The language, "'This is a FINAL JUDGMENT," surely was not inserted in an order as a judicial joke at a pro se litigant's expense.

APPENDIX H(Cont.)

Defendants' counsel also have been fooled by the complexities of this case. In the first appeal, the Fifth Circuit had to request briefing on the question of whether the May 3' 1993 order was interlocutory; defendant's counsel responded with an elaborate explanation in support of the proposition that it was. Conversely, in the second appeal, defendants' primary argument was that the October 30, 1995 order was not a final judgment. Everyone in this case has been badly confused throughout. Surely this constitutes good grounds for excusing Miles, a pro se litigant, from the draconian effect afforded to the October 30, 1995 ruling by the Fifth Circuit.

CONCLUSION

If Miles has made a mistake, or has in some way been neglectful, that mistake or neglect stems from a misunderstanding shared by experienced attorneys and by a United States District Judge. That mistake, shared by all parties, has led to a drafting error of constitutional dimensions. The only effect of granting a Rule 60(b)(4) or 60(b)(1) motion would be to permit Miles an appeal on the merits. Defendants have already briefed the merits of the case on appeal. No harm would be caused by granting the motion. Conversely, if the motion is not granted, Miles will have been denied any meaningful review of this Court's rulings.

Many people today question whether the American judicial system is "rigged" to favor insiders, and so arcane that only those with money can thread their way through its complexities. Some express their resentment through the establishment of "common law courts" and the like.

APPENDIX H(Cont.)

Miles has trusted the established legal system for redress of his grievances. The Fifth Circuit may or may not affirm this Court's rulings on the merits of the case. But if the merits are never reached, as a result of the comedy of trial and appellate errors presented by this record, many will say that Miles has been denied his day in court. A decision to grant this motion will cause no harm to anyone. It is a very modest request, and it should be granted.

Respectfully submitted,

/S/ **LAWRENCE P. MILES**

Statement Regarding Opposition

In compliance with S.D. TEx. Loc. R. 6(a)(4), movant has conferred with respondents' counsel, and no agreement regarding the disposition of this motion could be reached.

Request for Oral Hearing

From Miles' standpoint, this is a life or death motion. The Fifth Circuit has denied Miles any right to appeal this Court's judgment, on the theory that the October 30, 1995 order was this Court's final judgment. An oral hearing will give the parties a fair chance to explore the issue. Equally important, an oral hearing will give the Court a chance to explain what it meant when it issued the order. Since the principal issue addressed in this motion is whether Miles has received the minimum due process required by law, it seems fitting to err in the direction of generosity, and to grant Miles the fullest opportunity to air his grievance.

APPENDIX H (Cont.)

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF THE HOUSTON DIVISION

LAWRENCE P. MILES	)	
	)	
v.	)	No. CA-H-92-1246
	)	
	)	
SUNBELT NATIONAL BANK,	)	
LAUREN I. SCHVERAK, and	)	
MICHAEL B. MASSEY.	)	

AFFIDAVIT OF LAWRENCE P. MILES IN SUPPORT OF RULE 60(B) MOTION FOR RELIEF FROM JUDGMENT

THE STATE OF TEXAS)
)
COUNTY OF HARRIS)

Before me, the undersigned notary public, appeared Lawrence P. Miles, who after being duly sworn, deposes and upon his oath states the following:

1. My name is Lawrence P.. Miles. I am over 18 and I am competent to make this affidavit. I have never been convicted of a crime involving moral turpitude. I have personal knowledge of every fact stated in this affidavit, and each and every fact stated in this affidavit is true and correct.

APPENDIX H (Cont.)

2. I am a pro se litigant in this cause, CA-H-92-1246 titled Lawrence P. Miles V. Sunbelt National Bank, et al. I am not a lawyer. I have also represented myself in several appeals to the United States Fifth Circuit arising from this suit, Nos. 93-2058, 93-2384 and 93-2442 consolidated, and 95-20736.

3. I initially interpreted the District Court's order as an appealable, judgment. I did so in part because the order was titled FINAL JUDGMENT," in part because it contained the sentence, "This is a FINAL JUDGMENT," and in part because the trial judge advised me to go home and start my appeal. I was very surprised when the United States Fifth Circuit ruled that this order was not in fact a final judgment. So were the defendants, who had argued the case was final. I concluded that there were some aspects of our legal system I did not understand and therefore resolved to proceed more carefully. In particular, I resolved not to 'jump the gun" and appeal prematurely, as the Fifth Circuit evidently thought I had done.

4. After receiving the Fifth Circuit's first ruling, I took a number of legal actions. All of these actions, including the motion to consolidate that triggered the October 30, 1995 order, were taken in the good faith belief that the District Court believed a final judgment already had been reached. I reached this conclusion in part because of the language of the District Court's *May 3, 1993* statements, in part because of the *May 3, 1993* order, and in part because of other actions taken and statements made by the District Court.

APPENDIX H (Cont.)

5. I examined this court's order of October 30, 1995 carefully when I first received it. I concluded for several reasons that it could not itself be a final judgment. First, it did not use the words "final judgment" anywhere in the order. Second. it was worded in passive language, apparently referring to something in the past that had led the Court to conclude that the case "is closed." I thought that this might be a mistaken reference to the earlier "FINAL JUDGMENT" that had been determined by the Fifth Circuit not to be a "real" final judgment.

6. Third, and most important to me, this court ordered that "no further filing shall be made under this styled and numbered cause." Because I had filed notices of appeal before, I knew that a notice of appeal would be a "filing" in "this styled and numbered cause." I therefore concluded that the order explicitly precluded me from filing a notice of appeal. Because the court had threatened to impose sanctions in the past, I believed that there might be some very serious personal consequences if I chose to disregard the order. As I explained to the Fifth Circuit in my briefing in the second appeal, I viewed the October 30, 1995 order as "what amounts to a permanent restraining order ... to keep [me] from being able to even file an appeal of that post appeal order."

APPENDIX H (Cont.)

7. All defendants in this case are represented by experienced attorneys. Those attorneys believed, and represented to the Fifth Circuit, that the District Court's order of October 30, 1995 was not in fact a final order. Appellees Sunbelt and Schverak put forth as their principal argument that the appeal was "premature" because "there has been no final appealable order entered by the district court and unresolved issues remain to be tried." Appellee Massey argued that the Fifth Circuit lacked jurisdiction because "the record still does not show the entry of a final judgment from which an appeal can be taken".

Further, affiant saith not.

/s/ LAWRENCE P. MILES

SUBSCRIBED AND SWORN TO BEFORE ME

This 31day of July, 1996.

Notary Public in and for the

The State of Texas

/s/ Cheri Lange

My commission expires 8/12/98

NOTE: All exhibits and references to exhibits have been deleted from APPENDIX H in order to avoid duplication of exhibits presented with this petition, and the motion.

APPENDIX I

Memorandum Of Law
(In Support of Jury Trial Designation)

Background

Miles asserts that, Judge Kenneth Hoyt, in error, dismissed the lawsuit and complaints against the defendants because the plaintiff failed to orally restate his case in open court in a way to convince the judge of the merits of the case. Subsequently, the Judge dismissed the lawsuit for failure to state a cause of action. Miles asserts that the written complaint stated his cause of action with sufficient particularity to warrant a jury trial as scheduled by the court against all the named defendants. When the Court dismissed the suit against the Attorney and Substitute Trustee in the disputed loan and real estate transactions, Miles chose to stand on his written complaints and proceed to an interlocutory appeal of the issue of the court's dismissal of Massey. The Court then dismissed the rest of the defendants and issues and did not provide a jury trial of any defendant or issue which was reserved by Miles pursuant to Amendment VII of the Constitution of the United States. Miles asserts that Judge Hoyt exceeded his jurisdictional authority by dismissing any and all of the defendants and issues without an evidentiary hearing and/or a jury trial and the subsequent rulings by the Court and Appeals Court violated Miles Constitutional right of due process on his claims against all the Defendants.

APPENDIX I (Cont.)

Memorandum Of Law

Citations:

Brooks V. Pennsylvania R. Co., 91 F. Supp. 101 (DC SD NY, 1950).

"A complaint may not be dismissed on motion if it states some sort of claim, baseless though it may prove to be and inartistically as the complaint may be drawn, (or orally stated). This is particularly true where the plaintiff is not represented by counsel.

Yates V. Hoffman Estates, (1962, DC IL) 209 F. Supp. 757.

"The Courts are not at liberty to arbitrarily dismiss a Complaint alleging deprivation of constitutionally guaranteed rights." "When a judge exceeds his jurisdiction and grants or denies that beyond his lawful authority to grant or deny, he has perpetuated a 'non-judicial action'."

Constitution of the United States, Amendment VII, Section 1.

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise reexamined in any Court of the United States, according to the rules of common law."

47 Am Jur 2d., 631:

"The right to trial by jury is a fundamental right in our democratic system, and is recognized as such in the Magna Charta, the Declaration of Independence, the Federal Constitution, and the Constitution of the State of Texas."

APPENDIX J

016-57-2346

N561103

DESIGNATION OF HOMESTEAD

WHEREAS, the undersigned, personally present, and a property holder, in and of the County of Harris, State of Texas, owns and possesses lands in Harris County, Texas for resale and other purposes, and said lands and improvements thereon are owned by me in percentage of 50% of the total divided interests of said property and lands, which is by law exempt from forced sale, and personally and for my estate and for which I designate as my Homestead which I claim and to which I am entitled under the Constitution and Laws of the State of Texas.
NOW, WHEREAS, I the undersigned, have this day set apart and designated as the HOMESTEAD claimed by me, and to the degree legally possible, my heirs and my estate and myself who are entitled under the Constitution and Laws of the State of Texas, and therefore said property is exempt from forced sale the following described property in Harris County, Texas, to-wit: Lots 2 and 3, block No. 18, Sub Division Cherryhurst Add. in Harris County, Texas according to the Map of the plat thereof, recorded in Volume 5, Page 38 of the Map of Records of Harris County, Texas.

I do hereby expressly disclaim any homestead interest in any other lands owned or possessed by me, with the full knowledge that by the designation hereof of the foregoing, all persons and the public generally, shall have the right and responsibility to rely upon this written Designation of Homestead as herein represented.

APPENDIX J (Cont.)

016-57-2347

This statement and representation therefore revokes each and every previous Declaration of Homestead by me.

IN TESTIMONY WHEREOF, witness my hand, at Altadena, CA. on this 17th. day of Feb., A.D. 1992.

/S/ **LAWRENCE P. MILES**

THE STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES }

BEFORE ME, the undersigned authority, on this day personally appeared LAWRENCE P. MILES, known to me to be the person whose name is subscribed to the foregoing instrument, and, acknowledged to me that the foregoing instrument has been executed for the same purposes and consideration, therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 17th. day of February, A.D. 1992.

/S/ JERALDINE A. CHAMBERLAIN
Notary Public in and for
Los Angeles County, (SEAL)
California.

APPENDIX J (Cont.)

CLOSING DECLARATION

The PRECEDING HOMESTEAD DOCUMENTS are on file with the Department of Records, Harris County Texas as of Feb. 21, 1992, giving notice to the defendants and the public of this Homestead Designation. Further, the Defendants were noticed personally of this designation prior to their contested recording of the foreclosure and forced sale documents, and on July 13, 1992 after Miles had filed his bankruptcy action on July 10, 1992. Miles asserts that said contested foreclosure not only violates 11 U.S.C. 362, but also violates the foreclosure and Homestead laws of the State of Texas, and the Constitution of Texas, as Miles had no evidentiary hearing, or trial by jury of the contested foreclosure and forced sale. Texas law specifically provides for a hearing in District Court when a foreclosure is contested. The Federal District Court at Houston was acting as a State Court in this instance, and is required to provide a hearing. Despite all the rulings by the District Court and Appeals Court, Miles had no fair hearing to consider his side of the story regarding the contested foreclosure or any other issue, and had no opportunity to present his proof in open court.

I certify and declare that according to the F.R.C.P. the foregoing petition, facts as presented, & representations as submitted, are true and correct to the best of my knowledge and understanding.

September 16, 1997.

/S/ LAWRENCE P. MILES
Pro Se Petitioner
Appellant/Plaintiff